

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5456 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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CHOTHABHAI VIHABHAI KOLI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
Mr.Nigam Shukla, learned Addl. P.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/10/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the detention order dated 8-4-96 passed by the Police Commissioner, Rajkot City whereby the petitioner was ordered to be detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 17-4-96 and since that time the

petitioner is under detention at Porbandar District Prison, Porbandar.

2. The present Special Civil Application is filed on 24-7-96 and on 25-7-96 Rule returnable on 19-8-96 was issued. So far neither any reply has been filed by the respondents nor any affidavit-in-reply has been filed by the detaining authority and the matter has been sought to be contested orally by the learned Addl. P.P.

3. The grounds of detention enclosed with the detention order show that the petitioner alongwith his associates are doing unlawful business and he alongwith his associates are engaged in the manufacture of unauthorised country liquor, he has been running a Batti, he manufactures country liquor, keeps stock of the country liquor and has been earning money through these unauthorised business of selling the country liquor and for these acts earlier a detention order was passed against the petitioner under the Act on 13-2-95 but the petitioner was released from the detention by the Home Department of the Government on the recommendation of the Advisory Board. However, the petitioner was still continuing his activities. It is stated that even after his release from the detention with reference to the order dated 13-2-95 the petitioner alongwith his associates was carrying on the Batti of country liquor in the village Barvan, Taluka Rajkot and has also been selling it and minting money. The consumption of the country liquor manufactured by the petitioner was injurious to the health of the people. Apart from putting financial loss to the poor families and in order to see that no Latta Kand is repeated again and to prevent the petitioner from carrying on these unlawful and anti social activities and to protect the innocent citizens from petitioner's terror and public beating it was necessary to detain the petitioner.

Detaining authority has also recorded that 2 criminal cases of the year 1996 were pending police investigation against the petitioner pertaining to Rajkot Taluka Police Station at the time when the detention order was passed. Detaining authority had also referred to the statements of 3 witnesses with regard to the incident dated 6-4-96 in which the witnesses were abused and threatened by the petitioner, has used sharp edged weapon like Chhari and has extorted money from the pockets of the witnesses, threatened to kill them and was thus doing all sort of Dadagiris. The petitioner was beating witnesses whom he suspect to be the Police informer against him and thus on the basis of the

statements made by certain witnesses and taking into consideration the entire facts, the detaining authority formed the opinion that the steps with regard to externment etc. were not expedient and to prevent the petitioner from anti social activities it was necessary to detain him under the Act.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned Addl. P.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed apply with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 8-4-96 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.